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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Larissa Yudina, an individual; Felix
Sater, an individual; and OST Group, a
foreign entity;

Plaintiffs/Counterdefendants,

v.

Jody Kriss, an individual; and East
River Partners, LLC, a foreign
corporation;

Defendants/Counterclaimants.

Case No.: 2:16-cv-00932-DJH

**Plaintiff Larissa Yudina's Rule
41(a)(2) Motion To Dismiss Her
Claim for Declaratory Relief**

(Hon. Diane J. Humetewa)

Pursuant to Rule 41(a)(2), Fed. R. Civ. P., Plaintiff/Counterdefendant Larissa Yudina moves this Court for an Order dismissing her as a Plaintiff and her single claim for declaratory judgment in the Complaint (Doc. 1) against Defendants/Counterclaimants Jody Kriss and East River Partners, LLC (together, "Defendants").

1 **I. BACKGROUND FACTS**

2 In 2012 and 2014, Yudina registered certain of the domain names at issue in this
3 action. At the time she did so, Yudina was required to agree to the Internet Corporation
4 for Assigned Names and Numbers' Uniform Domain Name Resolution Policy
5 ("UDRP"). In February of 2016, Defendants initiated a UDRP proceeding against
6 Yudina and Plaintiff Felix Sater. *See* Doc. 1 ¶ 18. The Forum Panelist ruled that the
7 domain names were confusingly similar to Defendants' registered trademarks and
8 ordered them to be transferred to Defendants. *Id.* ¶ 19, Exhibit B.

9 With the adverse UDRP decision, Yudina faced the Hobson's choice of either
10 losing the domains she registered or joining Plaintiff Felix Sater and OST Group in
11 bringing this action in the U.S. and in this District. Because the domain name registrar,
12 GoDaddy, is located in this District and Defendants consented to this Court's
13 jurisdiction when they filed their UDRP complaint, bringing suit in the U.S. was
14 Yudina's only alternative to the domain names being forcibly transferred at that time.
15 *Id.* ¶ 22, Exhibit C.

16 When Yudina agreed to participate in this action as a plaintiff, she did not
17 contemplate being forced to travel to the U.S. as part of it. She now faces the choice of
18 continuing to pursue her claim or losing the domain names she registered. She chooses
19 to give up her claim for relief, understanding that this will result in letting the UDRP
20 decision stand (with respect to her registered domains) and her registered domains¹
21 being forcibly transferred to Defendants accordingly. She reluctantly accepts this result.

22
23
24 ¹ A ICANN WHOIS search performed on May 10, 2017 (at
25 <https://whois.icann.org/en>) shows that there are six domains still registered to Yudina
26 which are <theastriverpartners.com>, <eastriverpartnersllc.com>,
<eastriverpartnersny.com>, <eastriverpartnersgroup.com>,
<eastriverpartners.net>, and <eastriverpartners.info>.

II. ARGUMENT

Federal Rule of Civil Procedure 41(a)(2) states in part that where Rule 41(a)(1) does not apply, “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Where defendants have pleaded counterclaims “before being served with the plaintiff’s motion to dismiss, the action may be dismissed over the defendant’s objection only if the counterclaim[s] can remain pending for independent adjudication.” *Id.*

“A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) (citations omitted). “Legal prejudice” is “prejudice to some legal interest, some legal claim, [or] some legal argument.” *Id.* at 976 (citing *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996)). “Uncertainty because a dispute remains unresolved” or “the threat of future litigation which causes uncertainty” does not constitute plain legal prejudice.” *Westlands*, 100 F.3d at 96-97.

In this case, Defendants will suffer no plain legal prejudice if the Court grants this motion. They will get the same result they would have if Yudina had never participated in this action, *i.e.*, transfer of the six domains registered to her as a result of the UDRP decision. Moreover, dismissing Yudina’s claim and Yudina as a Plaintiff does not impact Defendants’ counterclaims against Yudina for cyber-piracy which remain pending unless Defendants choose to dismiss them.

III. REQUESTED RELIEF

For the reasons above, Yudina requests that the Court enter an Order pursuant to Rule 41(a)(2), Fed. R.Civ.P., that:

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